

EXHIBIT "A"

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
OMAHA DIVISION
MANUEL ACOSTA, et al.)
on behalf of themselves and all)
other similarly situated) CASE NO.
individuals,) 8:08-cv-00086-JFB-TDT

Plaintiffs,)
) *CONFIDENTIAL*

v.)
)
TYSON FOODS, INC.) TAKEN ON BEHALF
) OF THE
Defendant.) PLAINTIFFS

APPEARANCES:

Mr. Brian P. McCafferty For Plaintiffs
Attorney at Law
KENNEY & McCAFFERTY
3031C Walton Road, Suite 202
Plymouth Meeting, PA 19462

Ms. Evangeline Paschal For Defendant
Attorney at Law
HUNTON & WILLIAMS
1900 K Street, N.W.
Washington, D.C. 20006-1109

ALSO PRESENT: William O'Connor
Steve Jarchow

RULE 30(b)(6) DEPOSITION OF MARY UNGER, taken at
8:18 a.m. on May 19, 2010, by Rachel McMenamin, CSR, RPR,
and General Notary Public in and for the State of
Nebraska, taken at 1500 Woodmen Tower, Omaha, Nebraska.

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EXHIBIT INDEX

Ex.	Pg. Ref.	Description
No.	No.	
1	3	Notice of Rule 30(b)(6)
		Deposition
2	3	Preliminary Responses and Objections
		Spreadsheet
4	72	January 14, 2010 Memorandum

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1 (Deposition Exhibit Numbers 1 and 2 were
2 marked for identification.)

3 MARY UNGER
4 Of lawful age, being first
5 duly cautioned and solemnly
6 sworn as hereinafter certified,
7 was examined and testified as
8 follows:

9 MR. McCAFFERTY: We are here for a Rule
10 30(b)(6) deposition in the case Acosta versus Tyson
11 Foods. I have sent Counsel for Tyson a notice of
12 deposition that has 15 subject matter areas. That has
13 been premarked as Exhibit 1. And then I received -- it
14 might have been Monday or it might have been
15 yesterday -- the preliminary responses and objections
16 from Tysons.

17 MS. PASCHAL: It's dated the 17th as well.

18 MR. McCAFFERTY: Okay. And that has been
19 premarked as Exhibit 2. So if we need to make reference
20 to either document, we have that all set up. So let's
21 get started.

DIRECT EXAMINATION

BY MR. McCAFFERTY:

22 Q Could you state your name and spell it for the
23 record, please.

24 A Mary Unger. It's spelled M-a-r-y. Last name
25 is U-n-g-e-r.

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1 Q Who are you currently employed by, Mary?
2 A Tyson.
3 Q Can you be specific as to the corporate entity
4 that you work for?

5 A Tyson Fresh Meats in Madison, Nebraska.
6 Q You work at Madison, Nebraska?
7 A Yes.
8 Q What does that plant do?

9 A It -- the Madison plant produces fresh cuts of
10 pork such as loin, picnic ham, and spare ribs.

11 Q What is your position with Tyson?
12 A Personnel manager.
13 Q How long have you worked for Tyson?
14 A Since April of 2000.
15 Q How long have you worked at the Madison,
16 Nebraska plant?

17 A Six years.
18 MS. PASCHAL: And Brian, just for
19 clarification, you asked how long she worked at Tyson,
20 but I think before 2001, it was actually IBP. Now it's
21 all one company, but just for purposes of the record.

22 MR. McCAFFERTY: Right. That's a good point.

23 Q You've worked for the last six years in
24 Madison; correct?
25 A Yes.

DIRECT - UNGER (McCafferty)

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1 Q And then who did you -- or where did you work
 2 prior to Madison?
 3 A Norfolk.
 4 Q Is the Norfolk plant closed now?
 5 A Yes.
 6 Q Did you move to the Madison plant at the time
 7 Norfolk closed?
 8 A No. I moved before it closed.
 9 Q Have you worked at any Tyson or IBP facility
 10 other than Madison or Norfolk?
 11 A No.
 12 Q How long have you been the personnel manager
 13 at the Madison plant?
 14 A Six years.
 15 Q Have you ever given a deposition before?
 16 A Yes.
 17 Q Can you tell me the circumstances of why you
 18 gave a deposition?
 19 A Work comp.
 20 Q To make sure we're both talking about the same
 21 thing, was it a -- was the deposition you're referring
 22 to a situation similar to today where we're not in a
 23 courtroom, it's not a formal hearing, but we're here
 24 just with attorneys and a court reporter and a witness?
 25 A Yes.

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1 Q How long ago was that deposition?
 2 A Maybe three years ago. It was in my office in
 3 personnel.
 4 Q Do you remember it?
 5 A Yeah. I had the court reporter and two
 6 attorneys.
 7 Q Okay. So would it be fair to say that you
 8 understand this process and what we're doing here today?
 9 A Yes.
 10 Q And one thing I just want to make sure you're
 11 aware of, do you understand that you've been asked to
 12 testify as a corporate witness on behalf of Tyson?
 13 A Yes.
 14 Q And so do you understand that the answers that
 15 you give to my questions today, in a sense, legally bind
 16 the company? Has your counsel explained that to you?
 17 A Yes.
 18 MS. PASCHAL: Just for the record, objection
 19 to form to the extent it characterizes a 30(b)(6) a
 20 fact.
 21 MR. McCAFFERTY: Okay.
 22 Q Can you tell me what departments the Madison
 23 plant has.
 24 A Kill, cut, converting.
 25 Q Does it have any other departments besides

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1 those three?
 2 A Rendering, load out, maintenance. You've got
 3 management support and management, but --
 4 Q How about -- let me see if I can make this
 5 easier for you. Can you tell me which departments
 6 employ hourly workers?
 7 A All of those.
 8 Q Kill, cut, converting, rendering, load out,
 9 and maintenance?
 10 A Are hourly workers.
 11 Q Any others that we have not talked about?
 12 A No.
 13 Q Do you know how many hourly employees the
 14 Madison plant currently has?
 15 MS. PASCHAL: Objection to form. Do you mean
 16 in all its departments or just production?
 17 MR. McCAFFERTY: I mean all hourlies in this
 18 question.
 19 MS. PASCHAL: Okay.
 20 A All hourlies is 970.
 21 Q Could you tell me -- it looks like you're
 22 referring to a department. Could you just tell me what
 23 that document is.
 24 A It's a retention report that I do monthly.
 25 Q Has the number of hourly employees at the

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1 Madison plant changed significantly in the last five or
 2 six years?
 3 A No.
 4 Q It's been at or near 970?
 5 A Yes.
 6 Q When the Norfolk plant closed, did Tyson move
 7 any jobs or processes to the Madison plant?
 8 MS. PASCHAL: Objection to form.
 9 A No. We didn't move any to the Madison plant.
 10 We didn't move any jobs to the Madison plant. We didn't
 11 have to hire for a while, but --
 12 Q I see what you're saying. And there was
 13 another plant not too far away in West Point, Nebraska;
 14 is that correct?
 15 A Yes.
 16 Q And is that plant also closed?
 17 A Yes.
 18 Q When did that plant close?
 19 A It was about the same time the Norfolk plant
 20 closed.
 21 Q And so I would have the same question with
 22 regard to the West Point plant. Did Tyson move any jobs
 23 or processes from the West Point plant to the Madison
 24 plant when the West Point plant closed?
 25 A No. West Point and Norfolk were beef.

2 (Pages 5 to 8)

<p>Page 9</p> <p>1 Q Okay. 2 A Madison is pork. 3 Q Right. That makes sense. In terms of your 4 hourly employees, can you tell me how many hourly 5 employees currently work in the kill department? 6 A 211. 7 Q How many shifts per day does the kill 8 department operate? 9 A One shift. 10 Q How many hourly employees currently work in 11 the cut department? 12 A 284. 13 Q How many shifts per day does the cut 14 department operate? 15 A One. 16 Q How many hourly employees are currently 17 working in the converting department? 18 A Converting is divided into three different 19 areas. They have a loin area that's 125, they have 20 A Ham that's 116, and they have B Ham that's 115. 21 Q So if my math is correct, that's somewhere -- 22 356 employees? 23 A Yes. 24 Q How many shifts per day does the converting 25 department operate?</p>	<p>Page 11</p> <p>1 the time that it -- the chain stops. 2 Q When you say feed the chain, do you mean chain 3 of hogs? 4 A Turn -- yeah. Turn the chain on and turning 5 the chain off. 6 Q And you said that was in cut or converting? 7 A Cut. It's the same example of cut and 8 converting, it's the time that they turn it on and it 9 actually feeds the chain. 10 Q And how does that correspond to how hourly 11 workers are paid at the Madison plant? 12 A The -- the -- they're paid by gang. 13 Q Which means what? 14 A A lot of them are paid by gang. From the time 15 that the -- they get their first piece of meat to the 16 time that they're done with that piece of meat, the last 17 piece of meat. 18 Q So their pay starts when the first piece of 19 meat comes to their individual workstation? 20 A Yes, to the time that they're done with that 21 piece of meat. 22 Q With that piece of meat or with all pieces of 23 meat? 24 A All pieces of meat. 25 Q Are hourly employees in the kill department</p>
<p>Page 10</p> <p>1 A Loin and A Ham is A shift, and B Ham is B 2 shift. 3 Q How many hourly employees are -- work in the 4 rendering department? 5 A 12. 6 Q How many hourly employees work in the load out 7 department? 8 A 30. 9 Q How many hourly employees work in the 10 maintenance department? 11 A 65. 12 Q Have you ever heard the term gang time before? 13 A Yes. 14 Q Do you have an understanding of what gang time 15 is? 16 A Yes. 17 Q Can you tell me what gang time is, please. 18 A It's -- it's when production starts to when 19 production ends. 20 Q Does gang time have anything to do with how 21 employees are paid at the Madison plant? 22 A Yes. 23 Q Can you explain how that works. 24 A An example would be like on the cut, it's when 25 they start the chain -- they start feeding the chain to</p>	<p>Page 12</p> <p>1 paid on a gang-time basis? 2 A Yes. 3 Q Are all hourly employees in the kill 4 department paid on a gang-time basis? 5 A Not all hourly are paid on gang. 6 Q Can you tell me what would be the criteria 7 where some would be paid on gang time and some would 8 not? 9 A Some of them set the floor up, get it ready 10 for production to begin. They're not paid on gang time. 11 Q Do you have any idea how many people you would 12 be talking about that do the setup? 13 A I don't have a number, no. 14 Q Do you have an idea? 15 A Idea, probably one in each department. I 16 would say five. 17 MS. PASCHAL: Just to make the record clear, 18 Brian, that's from personal knowledge. 19 MR. McCAFFERTY: Right. 20 MS. PASCHAL: She's not prepared on that 21 particular topic. 22 MR. McCAFFERTY: Okay. I think that came 23 through, but okay. 24 BY MR. McCAFFERTY: 25 Q So other than these approximately five people</p>

3 (Pages 9 to 12)

<p>Page 13</p> <p>1 that do setup in the kill department, is everybody else 2 paid on a gang-time basis?</p> <p>3 A You have people that do cleanup.</p> <p>4 Q Do you know how many people do cleanup?</p> <p>5 MS. PASCHAL: Same objection.</p> <p>6 A I don't have the -- an estimate?</p> <p>7 Q Right. You don't -- you wouldn't even be able 8 to give me an estimate?</p> <p>9 A Well, I would say there's a cleanup person in 10 each department, so I would say five again, on an 11 estimate.</p> <p>12 Q Five total in the plant, or five just in the 13 kill department?</p> <p>14 A Five just in the kill department. Each 15 department has got their own cleanup person.</p> <p>16 Q So -- and I understand they're purely 17 estimates, but you've talked about possibly five people 18 doing setup and five people doing cleanup in the kill 19 department. Would it be fair to say that everybody else 20 gets paid on gang time?</p> <p>21 A Yes. I don't -- can't think of anybody else.</p> <p>22 Q How about on the cut department, does 23 everybody in that department get paid based on gang 24 time?</p> <p>25 A It would be the same as kill, your setup</p>	<p>Page 15</p> <p>1 Q So would it be our understanding with regard 2 to the cut department that there's one setup and one 3 cleanup person for each of the seven departments within 4 the cut floor?</p> <p>5 A No, they're different. They have a sales 6 department that is shared with the other supervisors, 7 and they have a -- another department that's shared.</p> <p>8 Q Okay. So is it your belief, then, that 9 there's probably five setup and five cleanup on the cut 10 floor?</p> <p>11 A Yes.</p> <p>12 Q Other than the five setup and five cleanup 13 people, is everybody else paid based on gang time on the 14 cut floor?</p> <p>15 A Yes.</p> <p>16 Q And I guess converting we'll talk about the 17 three different areas. The loin A shift, are those 18 employees paid based on gang time?</p> <p>19 A Yes.</p> <p>20 Q Are there any setup, cleanup people associated 21 with loin A shift?</p> <p>22 A Yes.</p> <p>23 Q Would you know how many?</p> <p>24 A I would -- again, it's a guess, one for each 25 department.</p>
<p>Page 14</p> <p>1 people and your cleanup people.</p> <p>2 Q How many people in cut do setup and cleanup?</p> <p>3 A It would be about the same, one per 4 department. About five.</p> <p>5 Q Okay. And just so -- I think we may be 6 confusing each other a little bit because we're probably 7 using department -- I think I'm using department in a 8 different way than you're using it. What would you call 9 the -- would you just call it the kill floor rather than 10 the kill department?</p> <p>11 A Yes, that's fine. Yeah.</p> <p>12 Q Okay. And so within the kill floor, are there 13 different departments as Tyson classifies it?</p> <p>14 A Yes.</p> <p>15 Q And how many different departments are there 16 on the kill floor?</p> <p>17 A Five.</p> <p>18 Q Okay. So when you say one per department, you 19 don't mean one in kill, one in cut, one in converting, 20 one in rendering, you mean one in each of the five Tyson 21 departments on the kill floor?</p> <p>22 A Yes.</p> <p>23 Q All right. I think we're back on the same 24 page. How many departments are there on the cut floor?</p> <p>25 A Seven.</p>	<p>Page 16</p> <p>1 Q One for each department? And how many 2 departments are there within the converting --</p> <p>3 A Converting -- the loin has two.</p> <p>4 Q Loin has -- loin A shift -- well, I guess 5 there's only one shift on loin; right?</p> <p>6 A Right.</p> <p>7 Q And there's two departments?</p> <p>8 A Yes.</p> <p>9 Q Do you believe that there's a setup and 10 cleanup person for each department in loin A shift?</p> <p>11 A Yes.</p> <p>12 Q Other than those setup/cleanup people, are the 13 rest of the hourly employees on loin A shift paid on 14 gang time?</p> <p>15 A Yes.</p> <p>16 Q Let's talk about the A shift ham. How many 17 departments are there?</p> <p>18 A Three.</p> <p>19 Q Three departments? Would it be your estimate 20 that there's one setup and one cleanup person for each 21 of the three departments on the A shift ham?</p> <p>22 A No. Because there's one department that is a 23 honey baked department, so they're combined with the 24 two, so there's just two.</p> <p>25 Q Other than the two setup and two cleanup</p>

4 (Pages 13 to 16)

<p>Page 17</p> <p>1 people on A shift ham, are the rest of the hourly 2 employees paid based on gang time? 3 A Yes. 4 Q Same questions for B shift ham. How many 5 departments does that have? 6 A Three. 7 Q How many setup and cleanup people are there 8 likely to be on -- 9 A Two. 10 Q Two setup, two cleanup? Other than the two 11 setup and two cleanup employees in B shift ham, are the 12 rest of the hourly employees paid on a gang-time basis? 13 A Yeah. 14 Q Are the rendering employees paid on a 15 gang-time basis? 16 A No. 17 Q Are the load out employees paid on a gang-time 18 basis? 19 A No. 20 Q Are the maintenance hourly employees paid on a 21 gang-time basis? 22 A No. 23 Q Are there any hourly employees other than 24 those in kill, cut, and converting that we've already 25 talked about that get paid on a gang-time basis?</p>	<p>Page 19</p> <p>1 A Yes. 2 Q How much pay do hourly workers receive for 3 pre-shift and post-shift time? 4 MS. PASCHAL: Objection to form. 5 A Depends on their job. 6 Q Can you explain what you mean by that? 7 A It depends on their job code that -- the job 8 that they're actually doing, depending on what safety 9 equipment they're required to wear. 10 Q I've heard the term used at other Tyson plants 11 referenced what's called a K code? 12 A Yes. 13 Q Does Madison use the K code? 14 A Yes. 15 Q Can you explain to me how K code works at the 16 Madison plant? 17 MS. PASCHAL: Objection to form. Are we 18 talking about currently or -- because, you know, there 19 have been changes throughout the -- 20 MR. McCAFFERTY: Yeah, let's talk about 21 currently. 22 MS. PASCHAL: Okay. 23 A Currently, they get five minutes before shift, 24 five minutes at first break, five minutes at second 25 break, five minutes at post.</p>
<p>Page 18</p> <p>1 A No. There is a training department that I 2 forgot. 3 Q Okay. Let's talk about that. How many hourly 4 employees are in the training department? 5 A 12. 6 Q What does the training department do? 7 A Train our hourly. 8 Q Are the 12 hourly training department 9 employees paid based on gang time? 10 A No, I don't believe so. 11 Q For the hourly workers that are paid based on 12 gang time, do they receive any additional pay other than 13 what's paid to them based on gang time? 14 A Yes. 15 Q What else are they paid? 16 A They're paid pre-shift and post-shift time. 17 Q What -- can you explain to me what pre-shift 18 and post-shift time is? 19 A It's the time that they use to get ready and 20 go to their workstation and then take off their 21 equipment and leave their station. 22 Q I didn't hear you. 23 A Take off their equipment and leave, yes. 24 Q Is there a notation on their pay stub that 25 specifically delineates pre-shift and post-shift time?</p>	<p>Page 20</p> <p>1 Q When you say post -- 2 A Post -- end of shift. End of shift. And then 3 they get time according to the equipment they put on. 4 Q When you say, for example, five minutes for 5 first break, do you mean five minutes for every shift? 6 Five minutes for first break for every shift? 7 A Yes. Every team member. 8 Q I didn't hear the last part. 9 A Every team member that's in production will 10 get -- 11 Q When you used the term production, can you 12 tell me what you mean by that? 13 A Training, kill, cut, loin, A Ham, B Ham. 14 Q Would all of converting fall within 15 production? 16 A Yes. 17 Q Would all of the cut floor fall within 18 production? 19 A Yes. 20 Q Would all the kill floor fall within 21 production? 22 A Yes. 23 Q And training as well? 24 A Yes. 25 Q Okay. Can we agree that for the rest of this</p>

<p>Page 45</p> <p>1 going to be our witness on that one -- on that topic. 2 MR. McCAFFERTY: Okay. 3 Q From the time period of March 2004 to 4 January 2007, that pre- and post-shift time of four 5 minutes a day, was that referred to as K code time? 6 A I don't know how it was referred to on the 7 check. 8 Q On the pay stub, you mean? 9 A Yeah. I don't know how it was referred to on 10 the pay stub. 11 Q How is -- how is the K code time currently 12 referred to on the pay stub? 13 A Pre- and post-shift. 14 Q Do you know how the K code time was referred 15 to on the pay stub during the time period January 2007 16 to February 2010? 17 A I can't remember. I would have to check. 18 Q Okay. Do you have an understanding of what 19 the current wage rates are for hourly employees at the 20 Madison plant? 21 A Yes. 22 Q Can you tell me what those rates are in terms 23 of a range or an estimate? 24 A They start at \$11 an hour. The base rate is 25 \$12.25 an hour. It takes ninety days to get up to base</p>	<p>Page 47</p> <p>1 Q Can you explain what that means? 2 A You have to do so many pieces of meat with the 3 quality and the quantity to qualify on a job. 4 Q And once you qualify on a job, do you own that 5 job, for lack of a better term? 6 A No. 7 Q Can you explain how that works, owning -- can 8 you own a job at the Madison plant? 9 A Yes, you can. You can bid on a job and own 10 the job. 11 Q Can you explain how that process works? 12 A The bidding system, it's posted on Thursday, 13 are the new jobs that are open, and they take it down on 14 Tuesday. And it's awarded to the most senior team 15 member by department -- or by converting, cut, kill. 16 Q You talked about the start pay of \$11 an hour 17 and the \$12.25 base rate. Does anybody at the Madison 18 plant who works on an hourly basis make more than \$12.25 19 an hour? 20 A Yeah. There's a range from \$12.25 all the way 21 up to \$16. 22 Q Does your seniority or time worked at the 23 Madison plant raise your pay -- and I'll give you an 24 example. If you have two people that work in the same 25 job and they both own their jobs but one's worked there</p>
<p>Page 46</p> <p>1 rate. 2 Q So is the \$11 an hour like a probationary wage 3 rate? 4 A Yes. Start pay. 5 Q If I worked at the Madison plant two years 6 ago, left, and decided to come back, let's say I came 7 back three weeks ago, would I start over at the \$11 an 8 hour? 9 A Yes. 10 Q And I would have to work the ninety days to 11 get back to the base rate? 12 A Unless you can qualify in your job, you can 13 get qualification pay and quick start if you come to 14 work every day. 15 Q What's quick start? 16 A It's -- if you're -- if you're on a job that 17 has a value, like grade 1 through 5 and you qualify on 18 that job, you don't have to wait your ninety days to get 19 the \$1.25 more, you get it right away if you come to 20 work every day for that week. 21 Q Can you explain to me what you mean by 22 qualifying for a job? 23 A You have to be able to pull a count. 24 Q Pull? 25 A Pull a count on your job.</p>	<p>Page 48</p> <p>1 two years longer than the other, will the one that's 2 worked there two years longer make more than the other 3 person? 4 A No. 5 Q Is that true, generally, of all the jobs at 6 the plant? 7 A Yes. 8 Q Does Tyson pay overtime at the Madison plant? 9 A Yes. 10 Q What -- how does one qualify to receive 11 overtime? 12 A After forty hours worked. 13 Q What -- what's the structure of the workweek 14 at Madison? When does the workweek begin and when does 15 it end? 16 A Begins Monday 12 a.m., ends Saturday -- yeah, 17 until Sunday -- wait a second. I need to strike that. 18 Q Okay. 19 A It's Sunday through Saturday. 20 Q Are there any departments at the Madison plant 21 that operate all three shifts? 22 MS. PASCHAL: Objection to form. 23 A Three shifts? 24 Q Yeah. Like twenty-four hours a day there's 25 somebody at the department working?</p>

12 (Pages 45 to 48)